

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Veronica Stewart)
Dist. 15, Map 17, Control Map 17, Parcels 5.00 & 5.01,) Warren County
S.I. 000)
Farm Property)
Tax Years 2004 & 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as set forth in exhibit A.

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on November 8, 2006 in Tullahoma, Tennessee. In attendance at the hearing were Veronica Stewart, the appellant, Warren County Property Assessor Carolyn Miller and Robert Spencer and Thomas Dillon of the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of two parcels located in Rock Island: (1) an 84.05 acre tract on Warren County Park Road (parcel 5); and (2) a 170 acre tract on Carl Hitchcock Road. Subject parcels are used in conjunction with the taxpayer's nursery. Parcel 5.01 is improved with a residence and various outbuildings.

Parcel 5.01 borders Center Hill Lake (a/k/a the Caney Fork River), but like all parcels on the lake/river, there is a parcel of public land between the waters edge and private property surrounding the lake/river.

As will be discussed below, this appeal concerns whether the State Board of Equalization has jurisdiction over tax year 2004 and the value of subject parcels for both tax years 2004 and 2005. The administrative judge finds that a brief summary of the facts leading up to the taxpayer's appeal will be helpful in understanding these issues.

Warren County underwent a countywide reappraisal effective January 1, 2004. The taxpayer does not dispute that she received assessment change notices for both parcels in April of 2004. Ms. Stewart stated that she did not appeal to the Warren County Board of Equalization because she assumed such a drastic increase in value was simply an error. Moreover, Ms. Stewart testified that she was busy with her nursery during the relevant time period. Ms. Stewart also stated that the website referenced on the back of the assessment change notice concerning “appealing your assessment” does not indicate there is a deadline for appealing.

In October of 2004 Ms. Stewart received her tax bill. At that point Ms. Stewart contacted the assessor of property, Carolyn Miller, to determine what recourse she had to challenge the appraisal. Both Ms. Stewart and Ms. Miller testified that Ms. Miller advised Ms. Stewart the local board had adjourned for tax year 2004, but she could appeal to the Warren County Board of Equalization when it convened for tax year 2005 on or about June 1, 2005. Ms. Miller did not advise Ms. Stewart she had until March 1, 2005 to file a “reasonable cause” appeal with the State Board of Equalization pursuant to Tenn. Code Ann. § 67-5-1412(e).

Ms. Stewart duly filed an appeal with the Warren County Board of Equalization during its 2005 session. The local board reduced the appraisal of parcel 5.01 from \$718,300 to \$333,200 for tax year 2005 by reducing the condition factor used to value the land from 320% to 130%. The local board did not reduce the \$211,400 appraisal of parcel 5.

Ms. Stewart proceeded to file an appeal with the State Board of Equalization which was received on August 1, 2005. Ms. Stewart indicated on the appeal form that she wished to appeal both tax years 2004 and 2005.

At the hearing before the undersigned administrative judge, Ms. Stewart essentially argued that she believed the 2004 reappraisal program caused the appraisals of subject parcels to increase excessively. Ms. Stewart maintained that parcels 5 and 5.01 should be appraised at \$151,290 (\$1,800 per acre) and \$333,200 (local board value) respectively.

The assessor of property contended that parcels 5 and 5.01 should be appraised at \$201,800 and \$732,300 respectively. In support of this position, the testimony and analysis of Thomas Dillon, CAE was offered into evidence. Essentially, Mr. Dillon’s analysis consisted of a sales comparison approach which led him to conclude that parcels 5 and 5.01 should be appraised at \$201,800 and \$732,300 respectively.¹ Mr. Dillon asserted that the sales did not support the reduction in value granted by the Warren County Board of Equalization.

The threshold issue in this appeal concerns whether the State Board of Equalization has jurisdiction over tax year 2004. The administrative judge finds that since the appeal was filed after March 1, 2005, the State Board of Equalization is foreclosed from taking jurisdiction pursuant to the “reasonable cause” provision set forth in Tenn. Code Ann. § 67-5-1412(e). Thus, in order for the State Board of Equalization to have jurisdiction over tax year 2004, Ms. Stewart would presumably have to establish that Ms. Miller deprived her of due process by not advising her of the possibility of a “reasonable cause” appeal for tax year 2004. See Op. Tenn. Atty. Gen. 92-62 (October 8, 1992); and *Summer Trace Apartments* (Assessment Appeals Commission) (Shelby Co., Tax Years 1995-1996).

¹ Mr. Dillon actually concluded that parcel 5.01 had a market value of \$773,700. However, Mr. Dillon simply sought reinstatement of the original 2004 appraisal of \$718,300.

The administrative judge finds it unnecessary to resolve the jurisdictional issue. The administrative judge finds that even if it is assumed *arguendo* that the State Board of Equalization has jurisdiction over tax year 2004, the taxpayer introduced insufficient evidence to support a reduction in value.

The administrative judge finds that the burden of proof is initially on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2004 (assuming there is jurisdiction) and January 1, 2005 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2. The administrative judge finds the Commission's reasoning equally applicable to this appeal. Respectfully, Ms. Stewart did not introduce any comparable sales or other evidence to substantiate her contentions of value.

The administrative judge finds that just as the burden of proof is on the taxpayer to support a reduction in value, the assessor has the same burden when seeking an increase in the appraised value. The administrative judge finds that Mr. Dillon's analysis comports with generally accepted appraisal practices and must be considered unrefuted.

The administrative judge finds that Mr. Dillon's analysis supports retaining the 2004 appraised values for 2005. The administrative judge finds it inappropriate to reduce the appraisal of parcel 5 from \$211,400 to \$201,800 unless the appraisal of 5.01 is increased to \$773,700 in accordance with Mr. Dillon's analysis.

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit B are hereby adopted for tax years 2004 and 2005.


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of November, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Veronica Stewart
Carolyn Miller, Assessor of Property

EXHIBIT A

Tax Year 2004

	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
Parcel 5	211,400	0	211,400	67,700
Parcel 5.01	679,700	38,600	718,300	179,575

Tax Year 2005

	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
Parcel 5	211,400	0	211,400	--
	67,700	0	67,700	16,925
Parcel 5.01	280,600	52,600	333,200	--
	116,800	52,600	169,400	42,350

EXHIBIT B

Tax Year 2004

	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
Parcel 5	211,400	0	211,400	67,700
Parcel 5.01	679,700	38,600	718,300	179,575

Tax Year 2005

	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
Parcel 5	211,400	0	211,400	--
	67,700	0	67,700	16,925
Parcel 5.01	679,700	52,600	732,300	--
	116,800	52,600	169,400	42,350